IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:	) Confirmation No.: 1004
	)
Rae K. Burns, et al.	) Examiner: Leslie Wong
	)
Serial No.: 10/006,543	) Group Art Unit No.: 2164
	)
Filed on: November 30, 2001	)
	)
For: TECHNIQUES FOR ADDING MULTIPLE SECURITY POLICIES TO A DATABASE SYSTEM	

Via EFS-Web
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR § 41.41

Sir:

This is in response to the Examiner's Answer mailed November 10, 2008. The period

for reply runs until January 10, 2009.

<u>REMARKS</u>

1.   The Examiner's Answer quotes MPEP § 715.02, which states, in part: "The 37 CFR 1.131 affidavit or declaration must establish **possession** of either the whole invention claimed or something falling within the claim" (emphasis in Examiner's Answer). The Examiner's Answer then incorrectly contends, "As such, in order to show possession of the claimed invention it is necessary to correlate the exhibits to the claimed limitations to facilitate evidence finding. *The examiners cannot be expected to search the entire record for the evidence, the difference lies in the way in which the evidence is presented* (**MPEP 715.05***)*" (emphasis in Examiner's Answer).

It is respectfully noted that MPEP § 715.02 states that it is the 37 CFR § 1.131 _declaration_ that must establish possession. Nothing is said about the **exhibits** establishing possession. Furthermore, the contention that correlating the exhibits with the claim limitations is **inconsistent** with 37 CFR § 1.131(b) which allows for exhibits to <u>not</u> accompany a declaration. If there are instances where exhibits are not required to accompany a declaration, then there cannot be a requirement to correlate exhibits to specific claim limitations.

To clarify, the statement that the "examiners cannot be expected to search the entire record for the evidence" is <u>specifically</u> directed to <u>interference testimony, not</u> exhibits. Also, it is not clear what is meant and intended by the statement, "The difference lies in the way in which the evidence is presented." However, it is respectfully noted that this statement is immediately preceded by the statement, "The facts to be established under 37 CFR 1.131 are similar to those to be proved in interference" (MPEP § 715.07(III)). Thus, the MPEP is merely suggesting that the facts that there are similarities and differences between 37 CFR 1.131 situations and interference situations. A similarity includes the facts that are to be established. A difference includes the way in which evidence is presented.

2.   It is respectfully noted that the Examiner's Answer fails to address Appellants'

argument that refers to the court ruling that "the PTO is required to accept Rule 131 Affidavits

at **face value**, and **without investigation**" (see, e.g., Herman v. Williams Brooks Shoe Co., 39

USPQ2d 1773, 1777 (S.D. N.Y. 1996); see also Chisum on Patents § 3.08[1][a] (2005);

emphasis added). This court ruling does not mean that an examiner should not look at the

exhibits. However, the court ruling does suggest that if the exhibits appear to be what the

inventors purport in the declaration, then the examiner need not make a further inquiry with

respect to the exhibits.

3.   Page 16 of the Examiner's Answer emphasizes the following statement from

MPEP § 715.07, "Applicant must give a clear explanation of the exhibits pointing out exactly

what facts are established and relied on by applicant." It is respectfully submitted that the

Applicants **followed this requirement** by pointing out the following facts that are established

and relied on in the declaration:

> 4.   We participated on a team that developed the implementation of claims 1
> – 5 and 21 – 25 that is incorporated into an Oracle™ database server product.
> After the design phase of the development, successful tests were run to show
> that the implementation worked according to claims 1 – 5 and 21 - 25. These
> tests, which were conducted using standard internal test processes and
> procedures, were completed before the effective filing date of Ayi and were
> carried out in this country.
> 5.   Attached as Exhibit A is a true and correct print out of substantially all of
> test script file 'tzlas01.sql'. The test script was used to test the implementation.
> 6.   Attached as Exhibit B is a true and correct printout of test script log file
> 'tzllas01.log', which shows the results of running the test script shown in Exhibit
> A before the effective filing date of Ayi. The results show that the tests were
> successful.
> 7.   Attached as Exhibit C is a true and correct print out of substantially all of
> test script file 'tzlbac14.sql'. The test script was used to test the implementation.
> 8.   Attached as Exhibit D is a true and correct printout of test script log file
> 'tzlbac14.log', which shows the results of running the test script shown in Exhibit
> C before the effective filing date of Ayi. The results show that the tests were
> successful.

9.   Exhibit D has been annotated with bolded and bracketed comments that illustrate how Exhibit D supports the claim language of Claims 1-5 and 21-25, as required by the Examiner in the Office Action dated March 3, 2006.

10.   Exhibits A, B, C, and D are submitted as probative of the fact that <u>the successful tests</u> referred to in paragraph 4 <u>were executed before the filing date of Ayi</u>. (emphasis added)

4.   In response to Appellants assertion that "MPEP § 2138.05 pertains to interference practice and **37 CFR 1.131 does <u>not</u> apply in interference proceedings** (see MPEP 2138.01(III))," the Examiner's Answer cites (on page 17) the following portion of MPEP § 2138: "35 U.S.C. 102(g) issues such as conception, reduction to practice and diligence, ***while more commonly applied to interference matters, <u>also arise in other contexts</u>***" (emphasis in Examiner's Answer). This MPEP statement merely indicates that reduction to practice arises in contexts other than interference matters. However, this statement is far from **requiring** that the requirements under MPEP § 2138.05 *apply* to 37 CFR § 1.131 declarations.

Nevertheless, the Examiner has <u>not</u> indicated which of the three tests for actual reductions to practice the inventors have not fulfilled. Apparently, Office policy states:

a.   Testing is required unless operativeness of invention is readily apparent.
b.   Testing, if required, must be under actual working conditions or realistic simulation of working conditions.
c.   Test results must be repeatable.

It is respectfully noted that Appellants have fulfilled all three tests. The inventors stated in the declaration that "**successful <u>tests</u> were run to show that <u>the implementation worked</u>** according to claims 1 – 5 and 21 – 25" (¶ 4; emphasis added). Furthermore, software tests are clearly repeatable.

5.   There is a sound policy reason why a strict correlation between exhibits and each claim limitation is not required by the CFR and the MPEP. Many inventions (e.g., database-related inventions) are low level in nature. Thus, no user manual would ever describe the details of such inventions. Indeed, many inventions are "transparent" (or undetectable) to end-

users. Additionally, many design and functional specifications do not describe such inventions at the level in which the inventions are claimed. Therefore, a requirement for the sought-after correlation between exhibits and specific claim limitations **would effectively eliminate** the right of many applicants to antedate cited references.

6.   With respect to Claims 6 and 26, the Examiner's Answer cites (on page 18) paragraphs 6, 8, and 64 of *Ayi* for allegedly disclosing "associating a first policy of a first model set in a first package with a first table within the database system" as recited in Claims 6 and 26. The Examiner's Answer explicitly quotes the following portion of *Ayi* for this allegation: "defining a set of rules that establish a policy, and generating one or more labels based on the defined policy for marking, e.g., tagging, the dataset." However, this quoted portion merely teaches defining rules and generating labels. Claims 6 and 26, on the other hand, require (1) **registering** a package with a database management system and (2) that after **a policy of that package is associated with a table, an access mediation routine of that same package is invoked to determine whether an operation is allowed on data of that table**. The cited portions of *Ayi* (as well as *Hayman*) fail to teach or suggest registering such a package with a database management system.

7.   The Examiner's Answer <u>again</u> alleges (on page 18) that col. 9, line 55 to col. 10, line 4 of *Hayman* teaches "invoking the access mediation routine in the first package for determining whether to allow operation on data in the first table based on the first policy" as recited in Claims 6 and 26. The Examiner's Answer fails to address Appellants' argument in the Appeal Brief that:

> the reference does not disclose that a Reference Monitor may be registered so that it can be customized and implemented by the user. Indeed, the Reference Monitor was described in a version of Data General's security system as being "tightly integrated with Data General's operating system" (col. 1, lines 26-28). This indicates that customization is not readily possible and that the **Reference**

Monitor is actually an embedded native software component of the security system, not a separate package that can be <u>registered</u>. Again, this is all in contradiction to the elements of Claims 6 and 26. (emphasis in original)

8.   In response to Appellant's argument that "*Hayman* fails to teach or suggest that a policy module and policy data (1) originate from the <u>**same**</u> package (2) that is <u>**registered**</u> with a database management system," the Examiner's Answer <u>merely re-quotes</u> (i.e., without traversing this argument) (on page 20) col. 9, lines 61-65 and col. 8, line 67 to col. 9, line 13 of *Hayman*, the latter of which describes the Session Monitor. However, as discussed in the Appeal Brief, the Session Monitor "controls the manner in which a user or administrator initially <u>**gains access to the system**</u>, and the manner in which a user or administrator changes from their current mode of access to a different mode (for example, from user to administrator)" (col. 8, lines 55-60; emphasis added). In contrast, Claims 6 and 26 require that a policy of a package is associated with a table within the database system. **There is no teaching or suggestion in** *Hayman* **that the Session Monitor, or any component thereof, is associated with a table or other data objects within a database system**. Therefore, the Session Monitor cannot be equated to any portion of the recited package.

9.   It is true, as indicated in the Examiner's Answer on pages 20-21), that "label is registered with a database management system" is not recited in the claims. However, Appellants were not asserting such. Instead, Appellants were explaining that the logical result of the Examiner equating the "labels" described in col. 5, lines 18-60 of *Hayman* with the recited "first policy" of Claim 6 is that *Hayman*'s "label" would have to be of a package that is registered with a database management system because the recited "first policy" of Claims 6 and 26 is a policy of a package that is registered with a database management system. However, *Hayman*'s label is <u>not</u> of a package that is registered with a database management system.

10.   With respect to Claim 8, the Examiner's Answer merely quotes (on pages 21-22) col. 1, line 54 to col. 2, line 8 of *Hayman* for allegedly disclosing "said step of forming said each package further comprising including one or more administrative routines for defining a policy for the model set" as recited in Claim 8. It is unclear what in this quoted portion of *Hayman* could be equated to the recited "administrative routines."

The Examiner's Answer also quotes col. 4, lines 5-13 of *Hayman* for allegedly disclosing Claim 8. This is incorrect. That quoted portion states:

> allow the security policy enforced by the system to be configurable by each site to meet its individual requirements, privilege checks are done by means of "events". An event is defined as "a place in the code where a security-relevant decision is made or recorded". When the system needs to check whether a process should be allowed to perform some operation, it uses the unique event name defined for that particular privilege check to look up, in a table, the capability or capabilities which the process must possess to pass the check. By providing a <u>mechanism</u> for individual sites to modify the event name-to-capability table, the site can configure the system to enforce their own security policy, in addition to, or instead of, the supplied event/capability policy delivered with the security system. (emphasis added)

Perhaps the Examiner's Answer equates this "mechanism" of *Hayman* with the recited administrative routines for defining a policy. However, *Hayman* fails to teach or suggest that that "mechanism" is included in a package (1) that is <u>registered</u> with a database management system and (b) that <u>also includes the recited access mediation routine</u>, as Claim 8 would require.

11.   With respect to Claims 10 and 30, the Examiner's Answer quotes (on page 23) col. 5, lines 20-26 and col. 1, line 63 to col. 2, line 4 of *Hayman* for allegedly disclosing "the step of invoking an administrative routine of the first package for defining the first policy" as recited in Claims 10 and 30. This is incorrect. The first quoted portion mentions that a security system allows checks, to be placed on a process, concerning which operations the process can perform. The second quoted portion mentions that strict policies are enforced by the security

system based on security labels. Again, however, these portions of *Hayman* fail to teach or suggest that an administrative routine is of a package (1) that is <u>registered</u> with a database management system and (b) that <u>includes the recited access mediation routine</u>, as Claims 10 and 30 require.

12.   On page 24, the Examiner's Answer states that the recited "first package" of the claims is interpreted as *any* software routine or module. However, it is respectfully noted that "first package" is not recited in a vacuum. Claim 6 specifically recites that the one or more packages of routines are **registered** with a database management system. It is respectfully noted that <u>not any</u> software routine or module is <u>"registerable" with a database management system</u>. In fact, as repeatedly stated throughout this and previous responses, *Hayman* fails to teach or suggest a package of routines: (1) that is <u>registered</u> with a database management system; (2) that <u>implements a security model</u>; **and** (3) <u>includes an access mediation routine</u>, which is invoked to determine whether to allow an operation of data to be performed.

13.   With respect to Claim 11, the Examiner's Answer states (on page 24), "Examiner has addressed this argument in response to arguments b) claims 10 and 30 and claim 8. However, Claim 8 doesn't include the following language from Claim 11: "further comprising providing to the administrative routine of the first package a plurality of parameters including a policy name for the first policy and a plurality of label names for labels of the first policy"; nor does the Examiner's Answer address Appellants' arguments that pertain to this language of Claim 11.

14.   With respect to Claims 20 and 40, the Examiner's Answer merely quotes (on pages 26-27) col. 8, line 55 to col. 9, line 26 of *Hayman* for allegedly disclosing "further comprising the step of storing the set of allowed labels in a session cache for a communication session between the database management system and the user" as recited in Claims 20 and 40.

This is incorrect. The quoted portion of *Hayman* refers to the "Session Monitor" discussed previously. However, as mentioned in the Appeal Brief, both *Hayman* and *Ayi* lack any mention of the term cache or anything equivalent. Therefore, *Hayman* and *Ayi*, both individually and in combination, fail to even suggest that the recited set of allowed labels are stored in a session cache for a communication session between the database management system and a user. The Examiner's Answer fails to address this argument.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the rejection of Claims 1-40 under 35 U.S.C. § 103(a) lacks the requisite factual and legal bases. Appellants therefore respectfully request that the Honorable Board reverse the rejection of Claims 1-40 under 35 U.S.C. § 103(a).

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

/DanielDLedesma#57181/
Daniel D. Ledesma
Reg. No. 57,181

Date: January 9, 2009
2055 Gateway Place, Suite 550
San Jose, CA 95110-1083
Telephone: (408) 414-1080 ext. 229
Facsimile: (408) 414-1076